



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300 and 600

[Docket No. 221215-0273]

RIN 0648-BK85

**Magnuson-Stevens Fishery Conservation and Management Act;
Seafood Import Monitoring Program**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would add species or groups of species to the Seafood Import Monitoring Program (SIMP) established pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (MSA). In addition, this proposed rule would amend SIMP regulations to clarify the responsibilities of the importer of record; amend the definition of importer of record to more closely align with the U.S. Customs and Border Protection (CBP) definition; amend the language requiring chain of custody records to be made available for audit or inspection to add a requirement that such records be made available through digital means if requested by NMFS; clarify the Aggregated Harvest Report criteria; and clarify the application of SIMP requirements to imports into the Pacific Insular Areas.

DATES: Written comments on the proposed rule must be

received on or before [insert the date 90 days from date of publication in the **Federal Register**].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2022-0119, by any of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to <https://www.regulations.gov> and enter NOAA-NMFS-2022-0119 in the Search box. Click on the "Comment" icon, complete the required fields, and enter or attach your comments.

Mail: Submit written comments to Rachael Confair, Office of International Affairs, Trade, and Commerce, National Marine Fisheries Service, 1315 East-West Highway (F/IS5), Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

The draft Regulatory Impact Review and Initial Regulatory Flexibility Assessment supplementing this proposed rule are available on *www.regulations.gov*. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this proposed rule may be submitted to the Office of International Affairs, Trade, and Commerce and by submission to Information Collection Review (<https://www.reginfo.gov/public/do/PRAMain>).

FOR FURTHER INFORMATION CONTACT: Rachael Confair, Office of International Affairs, Trade, and Commerce, National Marine Fisheries Service (phone: 301-427-8361; or email: rachael.confair@noaa.gov).

SUPPLEMENTARY INFORMATION:

Background

NMFS issued a final rule on December 9, 2016, to establish the Seafood Traceability Program, also known as the Seafood Import Monitoring Program (SIMP) (see 50 CFR 300.320-300.325). The goal was to establish a risk-based traceability program as a means to combat illegal, unreported, and unregulated (IUU) fishing and seafood fraud, in response to recommendations from the Presidential Task Force on Combating IUU Fishing and Seafood Fraud. See SIMP proposed rule (81 FR 6210, February 5, 2016) and final rule (81 FR 88975, December 9, 2016) for further background. The program sets forth

permitting, reporting, and recordkeeping procedures relating to the entry into U.S. commerce of certain fish and fish products, identified as being at particular risk of IUU fishing or seafood fraud, in order to implement the Magnuson-Stevens Fishery Conservation and Management Act (MSA) prohibition on the import and trade, in interstate or foreign commerce, of fish taken, possessed, transported, or sold in violation of any foreign law or regulation or in contravention of a treaty or a binding conservation measure of a regional fishery organization to which the United States is a party. 16 U.S.C. 1857(1)(Q).

Although 13 species and species groups were initially identified for inclusion in SIMP, application of SIMP requirements to shrimp and abalone was stayed through regulation because gaps existed in the collection of traceability information for domestic aquaculture-raised shrimp and abalone, which is currently largely regulated at the state level. On April 24, 2018 (83 FR 17762), NMFS issued a rule for a domestic program for comparable traceability requirements as directed under the Consolidated Appropriations Act of 2018 (Pub. L. 115-141). Subsequently, NMFS lifted the stay on shrimp and abalone on May 24, 2018. SIMP requirements have been in effect for all initial thirteen species and species groups since December 31, 2018.

The 13 species and species groups were identified based on principles for determining seafood species at risk of IUU fishing and seafood fraud (at-risk species). On behalf of the National Ocean Council Committee on IUU Fishing and Seafood Fraud, NMFS issued draft principles and a draft list of at-risk species, solicited and considered public comment, then issued the final principles (listed below) and final list of priority (at-risk) species. See 80 FR 66867 (October 30, 2015) (providing finalized principles and a list of priority species developed using the principles). As part of this process, an interagency expert working group reviewed public comments and confidential enforcement information and developed the draft list of priority species, then reviewed further public comment prior to publication of the final list of thirteen species. See 81 FR 88975, 88978 (December 9, 2016). The seven final principles are:

Enforcement Capability: The existence and effectiveness of enforcement capability of the United States and other countries, which includes both the existing legal authority to enforce fisheries management laws and regulations and the capacity (e.g., resources, infrastructure, etc.) to enforce those laws and regulations throughout the geographic range of fishing activity for a species.

Catch Documentation Scheme: The existence of a catch documentation scheme throughout the geographic range of fishing activity for a species, and the effectiveness of that scheme if it exists, including whether a lack of proper documentation leads to discrepancies between total allowable catch and trade volume of a species.

Complexity of the Chain of Custody and Processing: Consideration of transparency of chain-of-custody for a species, such as the level of transshipment (in this context, the transfer of fish from one vessel to another, either at sea or in port) for a species, as well as the complexity of the supply chain and extent of processing (e.g., fish that goes across multiple country borders or fish that is commonly exported for processing or that is sold as fillet block vs. whole fish) as it pertains to comingling of species or catch.

Species Misrepresentation: The history of known misrepresentation of a species related to substitution with another species, focused on mislabeling or other forms of misrepresentation of seafood products.

Mislabeling or Other Misrepresentation: The history of known misrepresentation of information other than mislabeling related to species identification (e.g., customs misclassification or misrepresentation related to country of origin, whether product is wild vs. aquaculture, or product weight).

History of Violations: The history of violations of fisheries laws and regulations in the United States and abroad for a species, particularly those related to IUU fishing.

Human Health Risks: History of mislabeling, other forms of misrepresentation, or species substitution leading to human health concerns for consumers, including in particular, incidents when misrepresentation of product introduced human health concerns due to different production, harvest, or handling standards, or when higher levels of harmful pathogens or other toxins were introduced directly from the substituted species.

NMFS now seeks to expand SIMP to include additional species and species groups. In June 2022, the White House issued a National Security Memorandum on Combating Illegal, Unreported, and Unregulated Fishing and Associated Labor Abuses (NSM-11, June 27, 2022), directing NOAA to initiate a rulemaking by the end of 2022, to expand SIMP to include additional species or species groups, as appropriate, to combat IUU fishing and seafood fraud. NSM-11 at Section 5(a).

In December 2020, the U.S. House of Representatives passed the 2021 Consolidated Appropriations Bill (H.R. 7667), which included an accompanying report for NOAA to develop a priority list of other species for inclusion in SIMP in order to: (1) reduce human trafficking in the

international seafood supply chain; (2) reduce economic harm to the American fishing industry; (3) preserve stocks of at-risk species around the world; and (4) protect American consumers from seafood fraud. Although H.R. 7667 was not adopted into law, NOAA nevertheless published a Report to Congress in March 2022 titled "Developing a Priority List of Species for Consideration under the Seafood Import Monitoring Program" in response to House Report 116-455. The March 2022 Report to Congress referred to the list above as "criteria," but during the development of this proposed rule, the agency decided that they are more appropriately characterized as "goals." NMFS considered the four goals in its accompanying report when reviewing potential species and species groups for inclusion in SIMP. See Pub. L. 116-260 (enacting H.R. 133 as the Consolidated Appropriations Act).

NOAA's approach to this proposed rule continues to be built on the original seven principles for identifying species at risk of IUU fishing and seafood fraud under SIMP, given the objective of and authority for the program. Seafood fraud and reducing economic harm to the American fishing industry (goals 2 and 4 from House Report 116-455) are covered, respectively, under the misrepresentation and mislabeling principles and history of fishing violations, enforcement capacity, and catch documentation schemes principles.

Countering forced labor and other labor abuses in the seafood supply chain (goal 1) is an agency priority and NMFS will consider such concerns when reviewing potential species for inclusion. However, labor-abuse concerns alone will not be used as a basis for identifying species. See SIMP final rule (81 FR 88975, December 9, 2016) (explaining in response to comment 11 that, while forced labor and unfair labor practices are important issues in several fisheries and in the fish processing sector, the objective of the program is to trace seafood products from the point of entry into U.S. commerce back to the point of harvest or production for the purpose of ensuring that illegally harvested or falsely represented seafood does not enter U.S. commerce). NMFS will continue to provide information collected under SIMP to Federal agency partners, consistent with MSA data confidentiality provisions (16 U.S.C. 1881a(b)) and other Federal law, to aid in the investigation or prosecution of labor crimes and to support those agencies, through interagency groups and other actions, in efforts to address forced labor and other labor abuses.

As explained in the March 2022 Report to Congress, NMFS relies on reports and information from Federal partner agencies on forced labor, human trafficking, and child labor abuses in the seafood industry. Based on cross-referencing such information with information on Country of

Origin of U.S. seafood imports, shrimp and tuna (Albacore, Bigeye, Bluefin, Skipjack and Yellowfin) are the most predominant species that are entering U.S. markets and that are vulnerable to forced labor in the supply chain. Both species groups are already included in SIMP, but this proposed rule would add other tuna species to the program.

In the March 2022 Report to Congress, NMFS described “preserv[ing] stocks of at-risk species” (goal 3 in House Report 116-455) as including: threatened or endangered species affected by IUU fishing, species being overharvested due to fishing pressure, and/or species protected under legislation due to population decline. Conservation and management of living marine resources is a core NMFS mandate. When reviewing potential species for inclusion in SIMP, NMFS will indicate if any of the above labor abuse concerns are raised, but will not use these concerns as a basis for adding species to SIMP.

In addition to its evaluation of priority species, NMFS reviewed the efficacy of the program’s reporting and recordkeeping requirements and identified opportunities to refine the descriptions and requirements of certain data elements that International Fisheries Trade Permit (IFTP) holders are required to report, thus clarifying and standardizing information entered into the Automated Commercial Environment (ACE) for imports subject to SIMP. NMFS intends to clarify the small-scale harvest criteria

for the Aggregated Harvest Report in this proposed rule. For other data elements, NMFS intends to provide further guidance to the seafood industry and trade community by updating its Implementation Guide that outlines the entry filing process for the Partner Government Agenda Message Set. NMFS is updating the Implementation Guide based on feedback and questions NMFS received from the seafood industry and trade community through the SIMP support email and phone line, and lessons gleaned from SIMP audits. The current Implementation Guide is available online at <https://www.cbp.gov/document/guidance/nmfs-pga-message-set-guidelines>.

In addition to the proposed changes, NMFS is seeking comments on whether to consider a standardized "SIMP Form" that would build on the current sample model forms to create a required document that encompasses all traceability elements required under the program. Through program implementation, seafood industry stakeholders have requested a standardized form for use in lieu of the optional model forms. During the initial development of SIMP, the working group decided against inclusion of a standard form due to potential duplication with existing forms, especially those required by Regional Fisheries Management Organizations (RFMOs). In revisiting this decision, NMFS will be mindful of other forms that are required by RFMOs or applicable United States programs

(e.g., bluefin tuna catch documents, swordfish and frozen bigeye statistical documents, NOAA Form 370, and Certificates of Admissibility required under Marine Mammal Protection Act import provisions or High Seas Driftnet Fisheries Moratorium Protection Act). If NMFS ultimately determines to pursue a standardized form, further rulemaking may be required, including justifying any duplicate information collection, as well as associated analysis and/or processes consistent with the Regulatory Flexibility Act, Paperwork Reduction Act and other applicable requirements.

Seafood Import Permitting and Recordkeeping Procedures

This proposed rule would amend SIMP regulations to clarify current provisions and add a requirement that importers of record provide chain of custody documentation through digital means upon request. NMFS proposes to amend the International Fisheries Trade Permit (IFTP) regulations (50 CFR 300.322) to clarify that the importer of record on the Customs entry filing and the IFTP holder must be the same entity. Customs and Border Protection defines "importer of record" under 19 U.S.C. 1484 (Section 484, Tariff Act of 1930 as amended) as the owner, purchaser, or licensed Customs broker (CBP, 2001). A foreign entity, without a United States business presence, must have a U.S. resident agent (as defined in Customs regulations 19 CFR 141.18) that must serve as the importer of record and hold

the IFTP, and that is responsible for compliance with all SIMP requirements. SIMP audits have revealed that, in many cases, a third party (e.g., the U.S. purchaser of the seafood) has allowed their IFTP number to be used by a foreign importer of record, even though this is not allowed under the SIMP regulations. The process for obtaining an IFTP, the responsibilities of IFTP holders, as well as the requirements for the IFTP holder to update contact information are set forth in 50 CFR 300.322.

NMFS proposes to revise the IFTP regulations at § 300.324(d) to clarify that paper or electronic copies of all chain of custody documentation required under this subpart, and all supporting records upon which an entry filing or export declaration is made, must be maintained by the importer of record or the exporting principal party in interest as applicable, and made available for inspection, at the importer's/exporter's place of business for a period of two years from the date of the import, export, or re-export. Such records must be made available to NMFS upon request. These records can be provided in electronic format (within five days from receipt of the agency's request or audit notification) or paper format (within ten days from receipt of the record request or audit notification), or unless otherwise specified by NMFS. The importer's permit status will be verified electronically through the U.S. Customs ACE as part of the normal entry

filing. The proposed revisions clarify that supply chain records to support may be stored, retrieved and submitted to NMFS electronically, when requested to support an audit or inspection, thereby reducing the burden on NMFS and the trade community.

Application to Pacific Insular Area

In addition, this proposed rule would clarify that product coming into the Pacific Insular Area as defined in the MSA (16 U.S.C. 1802(35)) would be subject to all requirements of this section except those requiring (ACE) filing. When product is moved from the Pacific Insular Area to any place within the customs territory of the United States, all requirements would apply.

Consideration of Additional Priority Species

In its March 2022 Report to Congress, NMFS stated that it was evaluating the 13 current SIMP species or species groups (collectively, referred to as "species"), other species previously evaluated but not included in SIMP, and new species that were among the top 50 seafood imports in 2020 (by volume or value) and/or for which there were reports related to IUU fishing and seafood fraud risk. The current 13 species are Abalone (*Haliotis* spp.); Cod, Atlantic (*Gadus morhua*); Cod, Pacific (*Gadus macrocephalus*); Crab, Atlantic Blue (*Callinectes sapidus*); Crab, Red King (*Paralithodes camtschaticus*); Dolphinfinh (*Coryphaena hippurus*); Grouper (Family Serranidae); Sea

Cucumber (Class Holothuroidea); Snapper, Northern Red (*Lutjanus campechanus*); Shark (Orders Squaliformes, Hexanchiformes, Carcharhiniformes, Lamniformes, Orectolobiformes, Heterodontiformes, Pristiophoriformes); Shrimp (Order Natantia); Swordfish (*Xiphias gladius*); and Tuna - Albacore (*Thunnus alalunga*), Atlantic bluefin tuna (*Thunnus thynnus*), Bigeye tuna (*Thunnus obesus*), Pacific bluefin tuna (*Thunnus orientalis*), Southern bluefin tuna (*Thunnus maccoyii*), Skipjack (*Katsuwonus pelamis*), and Yellowfin (*Thunnus albacares*). The other species (new and previously evaluated) are: Anchovies; Billfish (Marlins, Spearfishes, Sailfishes); Catfish (Family Ictaluridae); Crabs, Blue (other); Crab, Dungeness; Crab, Blue King; Crab, Brown King; Crab, Golden King; Crab, Snow; Cuttlefish; Crustaceans (other); Eels; Flounder, Southern; Flounder, Summer; Haddock; Halibut, Atlantic; Halibut, Pacific; Perch, Lake (Yellow); Lobster, American; Lobster, Spiny and Rock; Mackerel; Menhaden; Mussels; Octopus; Opah (Sunfish, Moonfish); Oyster; Orange Roughy; Queen Conch; Red Drum; Snappers (Family Lutjanidae); Sablefish; Salmon, Atlantic; Salmon, Chinook; Salmon, Chum; Salmon, Coho; Salmon, Pink; Salmon, Sockeye; Scallops; Sea bass; Seaweed (Algae); Shellfish (Class Bivalvia); Skates and Rays; Sole; Squid; Sturgeon caviar; Tilapia; Toothfish; Trout; Tunas (other and bonitos); Wahoo; Walleye (Alaskan) Pollock; Weakfish; and Whiting, Pacific.

NMFS evaluated the above species using the seven original principles and built on the 2015 review with insights gleaned from SIMP audits and enforcement actions, supplemented by publicly available information on relevant Federal agency actions (e.g., reports, press releases), other published reports, and news articles. In addition, NMFS consulted with the NOAA Office of Law Enforcement and agency subject matter experts, as well as other government agency contacts as appropriate. NMFS believes that the initial thirteen species and species groups remain at risk and none should be removed from SIMP, and that two single species in SIMP should be expanded to larger species groups to minimize the risk of mislabeling and product substitution to bypass SIMP requirements. In addition, NMFS identified five new species for possible inclusion in SIMP due to IUU fishing and/or seafood fraud concerns. This proposed rule would result in 18 individual species and species groups in SIMP.

NMFS notes that the SIMP regulations focus on data necessary to establish traceability from point of harvest or production to entry into U.S. commerce for imported fish and fish products. For species currently under SIMP, equivalent information is being collected at the point of entry into U.S. commerce for the products of U.S. domestic fisheries and aquaculture facilities pursuant to various Federal and/or state fishery management and reporting

programs. Given that, there was no need to duplicate such requirements in the SIMP regulations. See 81 FR 88975, 88976 (responding to comment 2 on U.S. obligations under international trade agreements, in particular, with respect to national treatment). NMFS plans to follow the same approach in the current rulemaking, and thus is reviewing whether equivalent information is being collected for species proposed to be added to SIMP that are the products of U.S. domestic fisheries or aquaculture facilities. If there are gaps in collection of traceability information for domestic products that may affect the timing for inclusion of certain species under SIMP or affect whether certain species can be included.

NMFS is proposing to expand SIMP to include the following five species and species groups and expand two species groups already represented in SIMP. The estimated number of three-alpha species codes as classified by the United Nations Food and Agriculture Organization's Aquatic Sciences and Fisheries Information System (ASFIS) and Harmonized Tariff Schedule (HTS) codes that are associated with the proposed species are provided below.

NMFS also solicits public comment on the principles identified for inclusion of a species, information supporting or not supporting application of a principle to a species, economic or other impacts of including a species in SIMP, information on whether equivalent information is

being collected for proposed species that are the products of U.S. domestic fisheries, or comments on any other aspects of this proposed rule.

Proposed Expansion of Single-Species to Larger Species

Groups

Proposed Inclusion of All Species in the Snapper

(Lutjanidae) Family

NMFS proposes to expand the SIMP priority species list to include all species in the Snapper (Lutjanidae) family. “Unspecified snapper species” is one of the top 50 seafood products imported into the United States. The United States imported an estimated 24,581 mt (valued at \$215M) of Lutjanidae species in 2021. Mexico, Brazil, Panama, and Nicaragua (in descending order) account for the majority of snapper imported into the United States by both volume and value. Northern Red Snapper (*Lutjanus campechanus*) is already subject to SIMP reporting due to its history of fisheries violations, particularly illegal harvests in the U.S. Exclusive Economic Zone (EEZ) by Mexican lanchas (see 2021 Report to Congress submitted under the High Seas Driftnet Fishing Moratorium Protection Act, <https://media.fisheries.noaa.gov/2021-08/2021ReporttoCongressonImprovingInternationalFisheriesManagement.pdf>), the lack of a catch documentation scheme and enforcement capability outside the United States, and a strong history of species substitution with some species

presenting human health risks, due to parasites and natural toxins (80 FR 66867, October 30, 2015). The same factors that led to the species inclusion in 2015 exist today and, for that reason, NMFS believes that Northern Red Snapper should remain in SIMP and that other snapper species should be included as well. Although highly regulated in the United States, the red snapper fishery in the Gulf of Mexico is routinely subject to illegal fishing by Mexican *lanchas* (small-sized vessels usually intended for short trips close to shore). Mexico appears to have limited capacity to address such violations, which continue to pose significant challenges to U.S. enforcement. Red snapper continues to be substituted with rockfish (which presents parasite hazard), porgy, and other snappers that may have natural toxins and different hazards (Food and Drug Administration (FDA) Import Alert 16-04: Detention Without Physical Examination of Seafood Products That Appear To Be Misbranded). In addition, agency subject matter experts and enforcement partners have anecdotally shared concerns of misreporting and an uptick in snapper mislabeling. These concerns are based on the snapper landings at Tamaulipas, Mexico bound to the United States through Brownsville, Texas. Under this proposed rule, no additional HTS codes would be required as the only two HTS codes for *Lutjanidae* species are already listed under SIMP.

Inclusion of all snappers would add about 92 new ASFIS three-alpha species codes under SIMP.

NMFS has particular concern about the potential to mislabel Northern Red Snapper as another snapper species that is not subject to reporting and recordkeeping requirements. Snapper has been identified in multiple public reports as commonly mislabeled (Canadian Food Inspection Agency, 2021; FDA, 2021; Leahy, 2021; Wallstrom *et al.*, 2020; FDA, 2018; New York City Attorney General, 2018; Warner, 2016). While *Lutjanus campechanus* is the only species permitted to be marketed as "red snapper" by the FDA Seafood List, there are roughly 28 additional snapper species that include the word "red" in their common or vernacular name (e.g., Caribbean Red Snapper as a common name for the FDA approved market name 'snapper', or Pacific Red Snapper as vernacular for the approved FDA market name 'rockfish'). In reviewing declared snapper species data in 2019 and 2021, NMFS found that approximately 19 percent of imports declared the species as either Northern Red Snapper ("SNR") or the flagged non-specific snapper in the Lutjanid family ("SNX"). NMFS is continuing to analyze these imports, and consult with CBP, on species code usage and trends before and after SIMP implementation.

As noted above, illegal fishing for snapper species by Mexican *lanchas* in the U.S. EEZ continues to be of concern.

Lanchas are known to catch finfish stocks that are regulated by the United States, including red snapper. In the 2021 Report to Congress under the High Seas Driftnet Fishing Moratorium Protection Act, NMFS identified Mexico for having vessels fishing illegally in U.S. waters in the Gulf of Mexico. Mexico was previously identified for this same issue in 2015, 2017, and 2019. Mexico has also been negatively certified for failing to address the activities for which it was identified in 2017 and 2019, and its vessels have been subject to denial of privileges in U.S. ports until Mexico addresses the illegal *lancha* incursions. Despite the increasing number of prosecutions by Mexico and the imposition of fines on Mexican nationals found guilty of fishing in U.S. waters, the United States remained concerned that these actions had not yet had a material effect on the number of incursions. The United States imported 4,796,693 kilograms of fresh and frozen snapper from Mexico in 2018 (with a declared value of \$33,036,108). Based on previous consultations with Mexico it appears that, while control of the licensed fleet may have improved, there continues to be an unlicensed fleet that operates without meaningful monitoring or control by Mexico.

Expanding Tuna Species Group to Include Additional Tuna Species

SIMP currently includes five general species of tunas (albacore, bigeye, bluefin, skipjack, and yellowfin) due to a history of fishing violations, transshipment and complex supply chains, lack of a complete documentation scheme (even across various reporting and management mechanisms), and substitution history (80 FR 66867, October, 30, 2015). Tuna species are highly regulated domestically and internationally, and in some cases are already subject to tracking or catch documentation. However, due to the high volume and high value of most tuna species, existing enforcement capabilities remain insufficient, as reflected in continued reports of IUU fishing. NMFS believes all of the above issues are still present today, thus the currently listed tuna species should remain in SIMP. Based on concerns about illegal fishing, misrepresentation, and species misreporting in the supply chains from multiple nations, this proposed rule would expand the tuna species group under SIMP to include the following: slender tuna (*Allothunnus fallai*), bullet tuna (*Auxis rochei*), frigate tuna (*Auxis thazard*), kawakawa (*Euthynnus affinis*), spotted tunny (*Euthynnus alletteratus*), black skipjack tuna (*Euthynnus lineatus*), blackfin tuna (*Thunnus atlanticus*), longtail tuna (*Thunnus tonggol*), bonito – sometimes marketed as dogtooth tuna – (*Gymnosarda unicolor*), escolar – sometimes marketed as white tuna – (*Lepidocybium flavobrunneum*), hamachi/yellowtail/amberjack – sometimes

marketed as racing tuna – (*Seriola quinqueradiata*), or other species marked or described as “tuna.”

In 2021, the United States imported approximately 269,845 mt (valued at \$1.8B) of the tuna species currently covered under SIMP, as well as about 16,943 mt (\$54M) of additional tuna species proposed. Thailand, Vietnam, and Indonesia account for the majority of U.S. tuna imports currently covered under SIMP. Vietnam, the People’s Republic of China, and Thailand account for the majority of imports of the proposed additional tuna species. Tuna is in the top 50 seafood imports for the United States. Inclusion of the expanded tuna species group would add approximately eight HTS codes and 27 ASFIS three-alpha species codes (depending on scope) to SIMP.

With regard to illegal fishing, NMFS identified three vessels harvesting unspecified tuna and bycatch species in the 2020 Notice of Foreign Fishing Vessels presumed to have engaged in IUU fishing (CSMS #43272528), an alert to the U.S. trade community that products harvested by these vessels are prohibited from entry and/or subject to seizure/forfeiture under 16 U.S.C. 1857(1)(Q). All three vessels were operating within the International Commission for the Conservation of Atlantic Tunas (ICCAT) Area and identified as *Ocean Star No. 2* (Vanuatu-flagged in 2016, but presumed stateless), *Mario 11* (Senegal-flagged), and *Mario 7* (Senegal-flagged). The 2021 Report to Congress under the

High Seas Driftnet Moratorium Protection Act provides further details on the above vessels. In the 2017 and 2019 Report to Congress under the High Seas Driftnet Fishing Moratorium Protection Act, NMFS identified Ecuador for failure to fully investigate Inter-American Tropical Tuna Commission (IATTC) purse seine vessels authorized to fish for tuna. Ecuador was later positively certified in 2021 due to corrective actions and increased participation in IATTC Compliance Committee and responsiveness to all new identified cases.

In a nationwide operation in 2019, in cooperation with CBP and FDA, NMFS found that importers misidentified some consignments of tuna in the entry filing as bonito, which has significantly lower tariff rates. In addition to NMFS actions, CBP identified 32 companies misreporting tuna as bonito and took actions to recover nearly \$600,000 in lost revenue to the United States due to the underpayment of tariffs (NMFS, 2021).

The FDA Seafood List accepts "tuna" as the market name for 15 species, eight of which do not require SIMP data reporting (e.g., frigate tuna, longtail tuna). There are three additional species that use "tuna" in their common or vernacular name but are not allowed to be marketed as "tuna" (e.g., dogtooth tuna). All eleven of these species can be and are confused with the species of tuna that require SIMP reporting. Due to the lack of species-

specific reporting more broadly, NMFS is unable to identify exactly which tuna species are being mislabeled and/or misrepresented.

As noted earlier, tuna (Albacore, Bigeye, Bluefin, Skipjack and Yellowfin) and shrimp are the U.S. seafood imports most vulnerable to forced labor. In 2019, 2020, 2021, and 2022, CBP has issued six Withhold Release Orders (WRO) for the suspected use of forced labor during operations on five individual fishing vessels (*Tunago No. 61*, *Yu Long No. 2*, *Da Wang*, *Yi Hsing No. 12*, and *Hangton No. 112*) and all fishing vessels owned by a one company (Dalian Ocean Fishing Co. Ltd.). All six WROs identified tuna as one of the species harvested during harvesting operations on the fishing vessels (CBP, 2022). The most recent WRO was for the Fijian flagged *Hangton No. 112* tuna longliner, owned by Hangton Pacific Co., which exports 95 percent of its fresh and frozen tuna products to the United States and Japan and smaller quantities to other nations, according to *Seafood Source* (White, 2021).

Additional Priority Species for Inclusion on the SIMP

Priority Species List

Cuttlefish and Squid

NMFS is proposing to add squid and cuttlefish to SIMP as a single species group. There is significant overlap between the fisheries for both species as well as documented mislabeling of squid as cuttlefish. The two

species also share certain U.S. tariff codes. NMFS identified the following risk principles for cuttlefish and squid: lack of enforcement capability, species substitution, lack of catch document scheme, history of fishing violations, chain of custody and processing complexity, and other misrepresentation. NMFS evaluated squid in 2015 and did not find enough risk across the suite of principles to warrant SIMP inclusion (80 FR 66867, October 30, 2015). Since then, new information has demonstrated the escalating fishing pressure on squid, the lack of enforcement capacity, and the increased reports of mislabeling and potential for IUU fishing, especially illegal and unregulated fishing (Lawrence et al., 2022; Park et al., 2020; World Wildlife Fund-Trygg Mat Tracking (WWF-TMT), 2020).

Squid is one of the top 50 seafood imports for the United States. In 2021, the United States imported approximately 40,412 mt (\$245M) of squid and cuttlefish. The People's Republic of China, India, and Thailand (in descending order) are the three largest exporters of cuttlefish and squid to the United States. Inclusion would add an estimated 15 HTS codes and 240 ASFIS three-alpha species codes.

NMFS found multiple reports of species substitution for cuttlefish in association with squid and/or octopus mislabeling (Lawrence, 2022; Ho et al., 2020; Department of

Justice (DOJ), 2019; Luque & Donlan, 2019; National University of Singapore News, 2019; Golden & Warner, 2014). In 2019, two corporations in the New York area pleaded guilty to defrauding over ten grocery stores, in violation of the Lacey Act. The defendants imported, processed, marketed, and distributed over 113,000 pounds of giant squid from Peru falsely labeled as octopus (DOJ, 2019).

Squid and cuttlefish have also been the subject of IUU fishing. China, along with various other nations, has taken action against the Chinese distant water fleet (DWF) for illegal fishing for squid and cuttlefish in South American waters (Godfrey, 2019; Godfrey, 2016). In 2016, Argentina sank a Chinese state-owned vessel for repeated illegal harvests. Other nations have taken action against Chinese DWF, such as Ivory Coast's confiscation of two vessels in 2014 and Peru's 2004 detention and fines issued to nine vessels (Godfrey, 2016). In 2019, China issued fines and revised its domestic law on its DWF requiring tracking systems and certificates of origin for legally landed squid (Godfrey, 2019). Despite this, in 2020, Argentina sent China an official complaint about its squid jiggers illegally operating in Argentina's EEZ (Godfrey, 2020). In 2021, China announced a short moratorium on its squid fishing fleets in the Atlantic and Pacific (Godfrey, 2021). A World Wildlife Fund-Trygg Mat Tracking report estimates that unregulated squid fisheries in the Indian

Ocean expanded by 830 percent (from 30 to 279 fishing vessels) between 2015 and 2019. The Indian Ocean area subject to increased fishing is beyond the Southern Indian Ocean Fisheries Agreement convention area and the EEZs of Oman and Yemen (WWF-TMT, 2020). The fishing pressure on squid and cuttlefish fisheries is expected to continue to meet the demand in Asian and other foreign markets.

Octopus

NMFS proposes to add octopus to SIMP due to the species' close connection to squid and cuttlefish fisheries and the following principles: species substitution, lack of enforcement capability, lack of catch document scheme, history of fishing violations, and other misrepresentation. NMFS is not adding octopus to the cuttlefish and squid species group because these species do not share any HTS codes. NMFS evaluated octopus in 2015 and did not find enough risk across the suite of principles to warrant SIMP inclusion (80 FR 66867, October 30, 2015). Since then, various reports have claimed that octopus is at risk for IUU fishing and fraud. Octopus is among the top 50 seafood products imported into the United States. In 2021, the United States imported roughly 30,565 mt (\$259M) of octopus. Spain, Indonesia, and Mexico (in descending order) are the three largest exporters of octopus to the United States. Inclusion would add approximately five HTS codes and 75 ASFIS three-alpha species codes to SIMP.

The *World Octopus Fisheries* (2019) report mentions the difficulty of tracking the trade of octopus products due to the “high levels” of IUU fishing (Warwick et al., page 397). While data on octopus is limited when compared to squid and cuttlefish, there are documented cases of illegal harvests in Europe and Northern Africa. In 2021, 35 kilos of undersized octopus were seized in Puerto de Mazarrón, Spain (Murcia Today, 2021). In 2022, *Seafood Source* reported on Morocco's National Institute of Fisheries Research report claiming the octopus populations declined by 60 percent due to the illegal fishing and trafficking activities of an organized group of operators (Loew). Earlier this year, Morocco's Prime Minister announced its expansion of Marine Protected Areas and increased resource protection to counter IUU fishing efforts (Oirere, 2022). From 2018 to October 2022, the United States imported approximately 118 million kilograms of octopus from Morocco and Spain, valued at \$974 million (NMFS, 2022).

The Monterey Bay Aquarium Seafood Watch Program has noted enforcement concerns and illegal fishing for the common octopus and the Mexican Four-eyed octopus in the Gulf of Mexico, similar to the concerns with common red octopus in 2015 (Seafood Watch, 2021; Felbab-Brown, 2020).

The substitutability of octopus and squid is also a concern (Lawrence, 2022; Luque & Donlan, 2019; Pramod et al., 2014; Golden & Warner, 2014). There have been some

varieties of squid that have been improperly substituted for more expensive octopus, including by a domestic food processor and distribution companies that were found guilty of mislabeling squid as octopus in violation of the Lacey Act (DOJ, 2019).

Eels (Anguilla spp.)

NMFS is proposing to add eels to SIMP. NMFS evaluated eels in 2015 and did not find enough risk across the suite of principles to warrant SIMP inclusion (80 FR 66867, October 30, 2015). Since then, there has been a significant increase in domestic and international illegal fishing for and trafficking in eels. NMFS identified the following risk principles for eels: lack of enforcement capability, lack of catch document scheme, history of fishing violations, chain of custody and processing complexity, other misrepresentation, and human health risks. In 2021, the United States imported approximately 7,924 mt (valued at \$80M) of eels. The People's Republic of China is by far the largest exporter of eels to the United States, followed by Thailand and Taiwan in decreasing magnitude. Inclusion would add approximately eight HTS codes and 13 ASFIS three-alpha species codes to SIMP.

As described below, there have been several domestic and international enforcement efforts and cases on the illegal harvesting and trafficking of eels. The

relationship between the history of violations and enforcement capability associated with eels is unclear at this time, and further complicated by the increase in fishing pressure due to market demand and the capacity to illicitly harvest and transport. NMFS is concerned that the enforcement cases indicate a wider problem and believes SIMP inclusion would facilitate future enforcement through better access to harvest and landing data required for U.S. entry.

A 2022 FDA Import Alert (16-131) warned of the detention without Physical Examination of farm-raised shrimp, dace, and eel from China due to the presence of new animal drugs and/or unsafe food additives. The FDA flagged residues of gentian violet, malachite green, and mebendazole for eels under the specific Import Alert. Contaminant levels from pollutants in European eels have been reported to be a human health concern (Guhl *et al.*, 2014).

Due to high demand in Asian markets, harvesters have turned to the American eel to fill the void resulting from depleted stocks of Japanese and European eels. Elver (juvenile eel) harvesting is prohibited in the United States as a result of overfishing, except in Maine and South Carolina where the fishery is regulated (Atlantic States Marine Fisheries Commission (ASMFC), 2021; Scientific American, 2015; DOJ, 2018). However, American,

European, and Japanese elvers are frequently targeted (International Criminal Police Organization (INTERPOL), 2021). An INTERPOL Environmental Security Programme report describes the "epidemic" of illegal commercial harvest and trafficking of elvers from Europe to Asia since the European Union initiated the zero export quota for the European eel. The eels are matured, harvested, processed, and exported as non-Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) species, such as American or Japanese eels. INTERPOL found species mislabeling was easily done as the species are difficult to distinguish without DNA testing and the products are labeled as "eel" (INTERPOL, 2021). The INTERPOL report also discussed the connection between criminals' exploitation of fisheries products like eels with other criminal and administrative abuses to maximize profits, such as avoiding customs regulations, tax fraud, human trafficking, and food fraud.

In 2022, the United States Department of Justice indicted American Eel Depot and associates for smuggling large quantities of live juvenile European eels from Europe to its factory in China. The government seized six containers that predominantly contained European eels but were intentionally labeled as American eels to circumvent detection by law enforcement. The European Union banned exports of European eel outside member nations in 2010.

Per the indictment, the defendants imported roughly 138 containers of eel into the United States over four years, with an estimated market value of over 160 million (DOJ, 2022). The live juvenile eels would be reared in China to maturity, then harvested, processed, and imported to the United States for sushi products. The Department of Justice press release states that "eel poaching and smuggling is one of the world's biggest wildlife trafficking problems, based on both the number of animals and the amount of money that changes hands in the black market" (DOJ, 2022). Additional enforcement initiatives related to illegal harvesting and trafficking of elvers from the United States to other nations (exports) include the United States Fish and Wildlife's Operation Broken Glass in 2018 and a joint enforcement operation across 18 nations sampling eel meat imported in violation of the Convention on International Trade in Endangered Species of Wild Fauna and Flora in 2018-2019 (DOJ, 2018; Sustainable Eel Group, 2020). During the latter operation, the United States found several imports of European eel, and further testing detected malachite green in the product (Sustainable Eel Group, 2020).

Queen Conch

NMFS is proposing to add Queen Conch (Family Strombidae) to SIMP due to IUU fishing in the Caribbean, lack of enforcement capacity, a lack of a catch document

scheme, and human health risks. NMFS evaluated Queen Conch in 2015 and did not find enough risk across the suite of principles to warrant SIMP inclusion (80 FR 66867, October 30, 2015). Since then, NMFS conducted a Status Review for an Endangered Species Act proposed listing (discussed further below) that found significant illegal, unreported, and unregulated fishing of Queen Conch throughout the region. NMFS believes species inclusion in SIMP will deter illegally harvested Queen Conch from being exported to the United States, and the harvest and landing data reported will aid in enforcement efforts. In 2021, the United States imported 702 mt (valued at \$14M) of conch (unspecified and *Aliger* species, formerly referred to as *Strombus* species). Approximately 70 percent of all internationally traded conch meat is consumed in the United States (CITES, 2021). Due to this high export rate and the high occurrence of IUU fishing documented, NMFS does not believe that existing regional enforcement capabilities are sufficient. Honduras, Belize, and Nicaragua (in descending order) are the three largest exporters of Queen Conch to the United States. Inclusion would add approximately three HTS codes and 40 ASFIS three-alpha species codes. In addition to the single Queen Conch species, NMFS may include in the final rule additional species, such as *Aliger* species (*A. costatus*, *A. pugilis*, *A. raninus*, *A. gallus*, and *A. goliath*), to prevent circumvention of SIMP

reporting requirements, and seeks public input on the scope of the species to be included.

Reports of IUU fishing for Queen Conch are relatively common in the Caribbean (Horn *et al.*, 2022). Due to concerns over the status of the species, NMFS is proposing to list Queen Conch as a threatened species under the Endangered Species Act (87 FR 55200, September 8, 2022). The proposed rule states that IUU fishing is a significant factor in the species decline of queen conch, representing approximately 15 percent of the total annual catch of the species (likely an underestimate). Illegal fishing of Queen Conch was especially prevalent in the Bahamas, Colombia, the Dominican Republic, Honduras, and Jamaica. The FDA initiated Import Alert 16-31 *Detention Without Physical Examination of Frozen Raw and Cooked Conchmeat* due to the high levels of detention of conchmeat from the Dominican Republic due to decomposition since 1985 (though the rate seems to have declined). In addition, at least two Caribbean nations have inquired about or encouraged NMFS to consider the inclusion of Queen Conch in SIMP. The United States, Puerto Rico, and the U.S. Virgin Islands have existing regulations for Queen Conch harvest. The domestic Queen Conch fishery is managed by NMFS and the Caribbean Fishery Management Council. Florida prohibited the Queen Conch fishery in the mid-1980s. Puerto Rico and the U.S. Virgin Islands manage the Queen Conch fishery in

their respective territorial waters, and the Fishery Management Plan for Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands manages the fishery in Federal waters (NMFS, 2022). Queen Conch is listed under CITES in Appendix II, which requires issuance of a valid CITES permit prior to export (or re-export). A CITES export permit may only be issued if the specimen was legally obtained (legal acquisition finding) and if the export will not be detrimental to the survival of the species (a non-detriment finding). Despite these measures, illegal harvest of Queen Conch persists. More information on the Caribbean nations' management and exploitation rates (harvesting) is available in the Endangered Species Act Status Review Report for Queen Conch (Horn *et al.*, 2022).

Caribbean Spiny Lobster

NMFS is proposing to add Caribbean spiny lobster (*Panulirus argus*) and associated species to SIMP based on the following risk principles: lack of enforcement capability, lack of catch document scheme, and history of fishing violations. NMFS evaluated several species of lobster in 2015, which included North American species (e.g., American Lobster and Caribbean Spiny Lobster) and non-native species (e.g., Rock Lobster and other Spiny Lobsters). At the time, NMFS did not find enough risk across the suite of principles to warrant SIMP inclusion (80 FR 66867, October 30, 2015). In the 2015 review, the

interagency Working Group noted general enforcement concerns for Caribbean Spiny Lobster and intermittent issues in the past with spiny lobster imports for size and labeling from Caribbean nations. Since then, new information has demonstrated the escalating pressure on the foreign stocks of spiny lobsters (*Panulirus* spp.), increased reports of IUU fishing, and little oversight and lack of enforcement capacity. NMFS is proposing to add all *Panulirus* species as spiny lobsters are commonly harvested together, commingled through the supply chain, and marketed interchangeably (pre- and post-U.S. entry). NMFS believes the inclusion of all spiny lobsters will discourage circumvention of SIMP reporting requirements and seeks public input on the scope of the species to be included. In 2021, the United States imported approximately 19,115 mt (valued at \$860M) of spiny lobster (*Panulirus* spp.). Canada, Brazil, and Honduras are major exporters of spiny lobster to the United States. While Canada appears to be the predominant exporter of spiny lobster, this may not in fact be the case, but rather may be due to the use of general HTS codes for both spiny lobster and cold-water lobster (*Homarus* spp.). NMFS is unable to differentiate prevalence of lobster species as the species-level data is not currently reported upon entry. Inclusion of spiny lobsters in SIMP would add roughly ten HTS codes and 46 ASFIS three alpha species codes.

NMFS subject matter experts believe Caribbean Spiny Lobster should now be included in SIMP due to a history of illegal fishing in the Caribbean and lack of enforcement capacity, as well as lack of a catch documentation scheme. Several articles substantiated these concerns in domestic and foreign waters in the Caribbean. A report prepared on behalf of the intergovernmental organization Caribbean Community (CARICOM) found the lack of monitoring, control, and enforcement of existing regulations and widespread IUU fishing are significant obstacles for the Caribbean spiny lobster fishery (Winterbottom *et al.*, 2012). These concerns and findings on IUU fishing of spiny lobster are echoed in a Monterey Bay Aquarium Seafood Watch report that noted the challenges in the Bahamas, Belize, Brazil, Honduras, and Nicaragua in enforcing fisheries regulations for Caribbean Spiny Lobster and the resulting high occurrence of IUU fishing (Sullivan, 2013). Other reports include a local Florida news source that noted the prevalence of poaching in the state's waters and the officials' aggressive stance to prosecute such cases (Stanwood, 2021). A Bahamas publication, *The Tribune*, reported that illegal or unregulated lobster harvests in the country represent around 36 percent of total landed catch (Hartnell, 2022). *InSite Crime* reported that lobster is a target species in the illegal fishing activities in the disputed archipelago of San Andrés between Colombia and

Nicaragua (Mistler-Ferguson, 2021). A 2009 unpublished study notes the lack of enforcement and illegal fishing trends of Caribbean spiny lobsters with undersized lobsters sent to foreign markets via third party countries (Ehrhardt *et al.*, 2009).

As cold-water lobsters (*Homarus spp.*) are well-managed and considered relatively low risk, only spiny lobsters are being proposed for inclusion under SIMP. NMFS acknowledges that SIMP reporting for spiny lobster could be circumvented by using the ASFIS three-alpha code for cold-water lobster as NMFS has seen for similar species. However, NMFS believes the separate HTS codes and the difference in physical characteristics of cold water and warm water lobster would facilitate identification and the distinguishing of the two crustacean groups (*i.e.*, only cold water lobsters have claws).

NMFS notes that there have been reports of labor abuses in the spiny lobster fishery (Department of Labor (DOL), 2020; DOL, 2022; Department of State, NMFS, 2020). The Department of Labor (2020, 2022) identified use of child labor for lobster harvesting in reports from Honduras. In 2004, the Honduran Government was sued by the Honduran Miskito Association of Disabled Divers and the Association of Miskito Women and the Council of Elders in the Inter-American Court of Human Rights (IACHR) for not holding a company accountable for labor abuses (Morris *et*

al., 2020; Avalos, 2021; IACHR, 2019). The court ruled in favor of the divers in 2021 (IACHR, 2021; Zorob & Candray, 2021). U.S. imports of lobster, predominantly spiny lobster, from Honduras from 2017-2021 amounted to approximately 5.2M kg and were valued at \$174M (NMFS, 2021). In addition, NMFS notes another H.R. 7667 goal to reduce economic harm to the American fishing industry with this species. Domestic stocks of Caribbean Spiny Lobster are well-managed and regulated, and the imported lobster from foreign harvests subject to IUU fishing concerns prevent a fair and competitive trade environment.

Aggregated Harvest Report Criteria

NMFS proposes revising the Aggregated Harvest Report exemption as described in § 300.321(b)(1) to clarify the criteria of the small-scale harvest accommodation as a record made at a single collection point on a single calendar day for aggregated catches by multiple small-scale fishing operations. For small-vessel harvests, this means aggregated at a single collection point on a single day by vessels of no more than 20 measured gross tons or by vessels less than 12 meters in overall length. The catch is offloaded at the same collection point on the same calendar day, or landed by a vessel to which the catches of one or more small-scale vessels were transferred at sea. The number of vessels contributing to the collection point for that day must be included in the Aggregated Harvest

Report. For small-scale aquaculture operations, this means a record made at a single collection point or processing facility on a single calendar day for aggregated deliveries from multiple small-scale aquaculture facilities, where each aquaculture facility delivers no more than 1,000 kilograms to the same collection point or processing facility on that day. The number of farms contributing to the collection for that day must be included in the Aggregated Harvest Report. An Aggregated Harvest Report may not be used for information for catches harvested by vessels greater than 20 measured gross tons or greater than 12 meters in length overall, catches collected from multiple locations or landed on different days, or deliveries of more than 1,000 kilograms from aquaculture facilities. This proposed rule would add clarifying text to the definition of aggregate harvest report and move the substance of the exemption to a new provision in the regulations, § 300.324(g).

Classification

NMFS is issuing this proposed rule pursuant to section 305(d) (16 U.S.C. 1855(d)) of the Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.* The NMFS Assistant Administrator has determined that this proposed action is necessary to implement MSA section 307(1)(Q) and is consistent with the provisions of the MSA

and other applicable laws, subject to further consideration after public comment.

Executive Order 12866

This proposed rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866.

NMFS has prepared a regulatory impact review of this action, which is available from NMFS (see **ADDRESSES**). This analysis describes the economic impact this proposed action will have on businesses and consumers.

The primary objective of this proposed rule is to collect or have access to additional data on imported fish and fish products to determine that they have been lawfully acquired and are not fraudulently represented and to deter illegally caught or misrepresented seafood from entering into U.S. commerce. These data reporting and recordkeeping requirements affect, *inter alia*, importers of seafood products, many of which are small businesses. Given the level of imports contributing to the annual supply of seafood, collecting and evaluating information about fish and fish products sourced overseas are a part of normal business practices for U.S. seafood dealers.

The permitting, electronic reporting, and recordkeeping requirements proposed by this rulemaking would build on current business practices (e.g., information systems to facilitate product recalls, to

maintain product quality, or to reduce risks of food-borne illnesses) and are not estimated to pose significant adverse or long-term economic impacts on small entities.

If this rule is finalized, NMFS estimates there will be approximately 487 new applicants for the IFTP, with an estimated industry-wide increase in annual costs to importers of \$23,863 in permit fees. Data sets to be submitted electronically to determine product admissibility are, to some extent, either already collected by the trade in the course of supply chain management, already required to be collected and submitted under existing trade monitoring programs (e.g., tuna and swordfish), or collected in support of third party certification schemes voluntarily adopted by the trade. Incremental costs are likely to consist of developing interoperable systems to ensure that the data are transmitted along with the product to ensure the information is available to the entry filer.

The proposed rule would apply to U.S. entities that import fish and fish products derived from the designated species. This proposed rule would be implemented so as to avoid duplication or conflict with any other Federal rules. To the extent that the proposed requirements overlap with other reporting requirements applicable to the designated species, this will be taken into account to avoid collecting data more than once or by means other than the single window (ACE portal). As stated above, this rule is

intended to allow NMFS to determine that imported seafood has been lawfully acquired and is not fraudulently represented and to deter illegally caught or misrepresented seafood from entering into U.S. commerce. Given the large volume of fish and fish product imports to the U.S. market, the number of exporting countries, and the fact that traceability systems are being increasingly used within the seafood industry, it is not expected that this rule would significantly affect the overall volume of trade or alter trade flows in the U.S. market for fish and fish products that are legally harvested and accurately represented.

Regulatory Flexibility Act

An Initial Regulatory Flexibility Analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule will have on small entities and includes a description of the action, why it is being considered, and the legal basis for this action. The purpose of the RFA is to relieve small businesses, small organizations, and small governmental entities of burdensome regulations and recordkeeping requirements. Major goals of the RFA are: (1) To increase agency awareness and understanding of the impact of their regulations on small business, (2) to require agencies to communicate and explain their findings to the public, and (3) to encourage agencies to use flexibility and to provide

regulatory relief to small entities. The RFA emphasizes predicting impacts on small entities as a group distinct from other entities and the consideration of alternatives that may minimize the impacts while still achieving the stated objective of the action. Below is a summary of the IRFA for the proposed rule which was prepared in conjunction with a Regulatory Impact Review (RIR). The IRFA/RIR is available from NMFS (see **ADDRESSES**).

The primary objective of this proposed rule is to collect or have access to additional data on imported fish and fish products to determine that it has been lawfully acquired and is not fraudulent and to deter illegally caught or misrepresented seafood from entering into U.S. commerce. These data reporting and recordkeeping requirements affect *inter alia* importers of seafood products, many of which are small businesses. Given the level of imports contributing to the annual supply of seafood, collecting and evaluating information about fish and fish products sourced overseas are a part of normal business practices for U.S. seafood dealers. The permitting, electronic reporting and recordkeeping requirements proposed by this rulemaking would build on current business practices (e.g., information systems to facilitate product recalls, to maintain product quality, or to reduce risks of food borne illnesses) and are not

estimated to pose significant adverse or long-term economic impacts on small entities.

If this rule is finalized, NMFS estimates there will be approximately 487 new applicants for the IFTP (all considered small-businesses), with an estimated industry-wide increase in annual costs to importers of \$23,863 in permit fees. Data sets to be submitted electronically to determine product admissibility are, to some extent, either already collected by the trade in the course of supply chain management, already required to be collected and submitted under existing trade monitoring programs (e.g., tuna, swordfish, current SIMP species), or collected in support of third-party certification schemes voluntarily adopted by the trade. NMFS has estimated that submission of an IFTP application, preparation and submission of message sets to ACE, maintaining the supply chain record keeping, and responding to audit requests would amount to \$2,356,117 in the first year and every three years (for broker software acquisition and maintenance), and \$895,117 each of the other years. The average importer of the priority species subject to the Program would incur an annual cost of \$3,727 in the first year and every three years and \$727 each of the other years.

The proposed rule would apply to U.S. entities that import fish and fish products derived from the designated priority species. This proposed rule would be implemented

so as to avoid duplication or conflict with any other Federal rules. To the extent that the proposed requirements overlap with other reporting requirements applicable to the designated priority species, this will be taken into account to avoid collecting data more than once or by means other than the single window (ACE portal). As stated above, this rule is intended to allow NMFS to determine that imported seafood has been lawfully acquired and is not fraudulently represented and to deter illegally caught or misrepresented seafood from entering into U.S. commerce. Given the large volume of fish and fish product imports to the U.S. market, the number of exporting countries, and the fact that traceability systems are being increasingly used within the seafood industry, it is not expected that this rule would significantly affect the overall volume of trade or alter trade flows in the U.S. market for fish and fish products that are legally harvested and accurately represented.

NMFS considered several alternatives in this rulemaking: The requirements described in the proposed rule, a no-action alternative and various combinations of data reporting and recordkeeping for the supply chain information applicable to the priority species. NMFS prefers the proposed rule approach as it would respond to the NSM-11 request. In addition, it is consistent with the existing requirement that all applicable U.S. Government

agencies are required to implement the International Trade Data System (ITDS) under the authority of the SAFE Port Act and Executive Order 13659, streamlining the Export/Import Process (79 FR 10657, February 28, 2014). Also, the proposed rule takes into account the burden of data collection from the trade and the government requirements for admissibility determinations.

Paperwork Reduction Act

This proposed rule revises an existing collection-of-information requirement (Control Number 0648-0732) previously approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). This revised requirement has been submitted to OMB for approval. The information collection burden for the requirements proposed under this rule (IFTP, harvest and landing data submitted at entry, and provision of records of supply chain information when selected for an audit) as applicable to imports of the designated priority is estimated to be 23,985 hours. Compliance costs are estimated to total \$23,863 for the permit application fees, \$439,907 for data submission into ACE, \$391,040 for supply chain recordkeeping, and \$34,880 for audit response. To determine estimates, NMFS evaluated the entry filings imported under the HTS codes of the proposed species, as well as the three-alpha species code declared as appropriate. To estimate labor costs of respondent burden,

NMFS applied the mean wage rate of Buyers and Purchasing Agents (Bureau of Labor Statistics Code 13-1020). This labor category most closely corresponds to fish importers and customs brokers who will be knowledgeable of the origin of the fish products, code the message set, submit electronic entries in ACE and respond to record requests when selected for audits. As of August 2022, the mean wage rate for this occupation series was estimated at \$34.88 per hour (<https://www.bls.gov/oes/current/oes131020.htm>).

IFTP Requirement: NMFS estimates that approximately 62 percent of the 1,269 importing companies of the proposed candidate species already have an IFTP (under existing agency requirements).

The online permit application process, including an abbreviated renewals process, is estimated to require 20 minutes on average. The increase in the number of annually issued IFTPs is estimated to be 487 permits, representing an increase of 162 hours and \$5,664 in burden hours.

Data Set Submission Requirement: Data sets to be submitted electronically to determine product admissibility are, to some extent, either already collected by the trade in the course of supply chain management, already required to be collected and submitted under existing trade monitoring programs (e.g., tuna, swordfish), or collected in support of third party certification schemes voluntarily adopted by the trade. Incremental costs are likely to

consist of developing interoperable systems to ensure that the data are transmitted along with the product to ensure the information is available to the entry filer. NMFS estimates that the number of entries for candidate species is approximately 42,040 annually. The estimated time to prepare the relevant message set is expected to be consistent with 0648-0732, which is a weighted average of 18 minutes to prepare and submit the message set to ACE. The additional responses represent an increase 12,612 hours and a total annual labor cost of \$439,907 (at an estimated \$34.88/hour labor rate).

Audit Response: NMFS does not expect the number of entries selected for an audit under SIMP to change. Approximately 2,000 entries are selected for audit under SIMP annually. NMFS estimates that retrieving and submitting records electronically takes about 30 minutes per event on average. For 2,000 responses, this represents a burden of 1,000 hours and a total annual labor cost of \$34,880 at an estimated \$34.88/hour labor rate.

This proposed rule does not anticipate any other information collection burden than what is identified in this section, and therefore is not requesting approval from OMB for the burden associated with any other aspects of the rule. Send comments on these or any other aspects of the collection of information to the NMFS Office for International Affairs, Trade, and Commerce at the ADDRESSES

above, and by email to OIRA_Submission@omb.eop.gov or fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects

50 CFR Part 300

Administrative practice and procedure, Exports, Fish, Fisheries, Fishing, Fishing vessels, Foreign relations, Illegal, unreported, or unregulated fishing, Imports, International trade permits, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Treaties.

50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fish, Fisheries, Fishing, Fishing vessels, Foreign relations, Illegal, unreported, or unregulated fishing, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

Dated: December 16, 2022.

Janet L. Coit,

Assistant Administrator,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300, subpart Q, and 50 CFR part 600, subpart H, are proposed to be amended as follows:

PART 300 - INTERNATIONAL FISHERIES REGULATIONS

1. The authority for part 300 continues to read as follows:

Authority: 16 U.S.C. 951 *et seq.*, 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 5501 *et seq.*, 16 U.S.C. 2431 *et seq.*, 31 U.S.C. 9701 *et seq.*

Subpart Q - International Trade Documentation and Tracking Programs

2. In § 300.321, revise the definitions for "Aggregated Harvest Report" and "International Fisheries Trade Permit" to read as follows:

§ 300.321 Definitions.

* * * * *

Aggregated Harvest Report means the record described in § 300.324(g).

* * * * *

International Fisheries Trade Permit (or IFTP) means the permit issued by NMFS under § 300.322.

* * * * *

3. In § 300.322, revise paragraph (a) to read as follows:

§ 300.322 International Fisheries Trade Permit.

(a) *General.* Any person who imports, as defined in § 300.321, exports, or re-exports fish or fish products regulated under this subpart from any ocean area must possess a valid International Fisheries Trade Permit (IFTP) issued under this section. Fish or fish products regulated under this subpart may not be imported into, or exported or re-exported from, the United States unless the IFTP holder files electronically the documentation and the data sets required under this subpart with U.S. Customs and Border Protection (CBP) via ACE at the time of, or in advance of, importation, exportation, or re-exportation. The importer of record and IFTP holder identified in an entry filing must be the same entity. If authorized under other applicable laws and regulations, a representative or agent of the IFTP holder may make the electronic filings on behalf of the IFTP holder. Only persons residing in the United States are eligible to apply for the IFTP. A resident agent of a nonresident corporation (see 19 CFR 141.18) may apply for an IFTP.

* * * * *

4. In § 300.323, revise paragraph (a) to read as follows:

§ 300.323 Reporting and recordkeeping requirements.

(a) *Reporting.* Any person who imports, exports, or re-exports fish or fish products regulated under this subpart must file all data sets, reports, and documentation as required under the AMLR trade program, HMS ITP, TTVP, and Seafood Import Monitoring Program (SIMP), and under other regulations in this title that adopt the requirements of this subpart. For imports, specific instructions for electronic filing are found in Customs and Trade Automated Interface Requirements (CATAIR) Appendix PGA (<https://www.cbp.gov/document/guidance/appendix-pga>). For exports, specific instructions for electronic filing are found in Automated Export System Trade Interface Requirements (AESTIR) Appendix Q (<https://www.cbp.gov/document/guidance/aestir-draft-appendix-q-pga-record-formats>). For fish and fish products regulated under this subpart, an ACE entry filing or AES export filing, as applicable, is required, except in cases where CBP provides alternate means of collecting NMFS-required data and/or document images.

* * * * *

5. Revise § 300.324 to read as follows:

§ 300.324 Seafood Traceability Program.

This section establishes a Seafood Traceability Program (also known as the Seafood Import Monitoring Program) which has data reporting requirements at the time of entry for imported fish or fish products and

recordkeeping requirements for fish or fish products entered into U.S. commerce. The data reported and retained will facilitate enforcement of section 307(1)(Q) of the Magnuson-Stevens Act and the exclusion of products from entry into U.S. commerce that are misrepresented or the product of illegal or unreported fishing. The data reporting and recordkeeping requirements under the program enable verification of the supply chain of the product offered for entry back to the harvesting event(s). In addition, the permitting requirements of § 300.322 pertain to importers of products within the scope of the program.

(a)(1) For species or species groups subject to this Seafood Traceability Program, data is required to be reported and retained under this program for all fish and fish products, whether fresh, frozen, canned, pouched, or otherwise prepared in a manner that allows, including through label or declaration, the identification of the species contained in the product and the harvesting event. Data is not required to be reported or retained under this program for fish oil, slurry, sauces, sticks, balls, cakes, pudding and other similar fish products for which it is not technically or economically feasible to identify the species of fish comprising the product or the harvesting event(s) contributing to the product in the shipment.

(2) The following species or species groups are subject to this Seafood Import Monitoring Program: Abalone

(*Haliotis* spp.); Cod, Atlantic (*Gadus morhua*); Cod, Pacific (*Gadus macrocephalus*); Conch, Queen (Family Strombidae); Crab, Atlantic Blue (*Callinectes sapidus*); Crab, Red King (*Paralithodes camtschaticus*); Dolphinfish (*Coryphaena hippurus*); Eel (*Anguilla* spp.); Grouper (Family Serranidae); Lobster (*Panulirus* spp., Family Scyllaridae); Octopus (Order Octopoda); Sea Cucumber (Class Holothuroidea); Snapper (Family Lutjanidae); Shark (Orders Squaliformes, Hexanchiformes, Carcharhiniformes, Lamniformes, Orectolobiformes, Heterodontiformes, Pristiophoriformes); Shrimp (Order Natantia); Squid and Cuttlefish - Cuttlefish (Order Sepiida), Coastal squid (Order Myopsida), and Neritic squid (Order Oegopsida); Swordfish (*Xiphias gladius*); and Tuna - Albacore (*Thunnus alalunga*), Atlantic bluefin tuna (*Thunnus thynnus*), Bigeye tuna (*Thunnus obesus*), Blackfin tuna (*T. atlanticus*), Black skipjack tuna (*E. lineatus*), Bullet tuna (*Auxis rochei*), Frigate tuna (*Auxis thazard*), Kawakawa (*Euthynnus affinis*), Longtail tuna (*T. tonggol*), Pacific bluefin tuna (*Thunnus orientalis*), Spotted tunny (*E. alletteratus*) Slender tuna (*Allothunnus fallai*), Southern bluefin tuna (*Thunnus maccoyii*), Skipjack (*Katsuwonus pelamis*), Yellowfin (*Thunnus albacares*), and Bonito—sometimes marketed as dogtooth tuna—(*Gymnosarda unicolor*), escolar—sometimes marketed as white tuna—(*Lepidocybium flavobrunneum*), hamachi/yellowtail/amberjack—sometimes marketed as racing

tuna—(*Seriola quinqueradiata*), or other species marked or described as "tuna". The harmonized tariff schedule (HTS) numbers applicable to these species or species groups are listed in the documents referenced in paragraph (c) of this section.

(3) The following species or species groups are also subject to this Seafood Traceability Program: Abalone and Shrimp. The harmonized tariff schedule (HTS) numbers applicable to these species or species groups are listed in the documents referenced in paragraph (c) of this section. The Seafood Traceability Program for these species or species groups consists of two components:

(i) The data reporting requirements of paragraphs (b)(1) through (3) and (c) of this section in conjunction with § 300.323(a); and

(ii) The permit requirements of § 300.322, the IFTP number reporting requirement in paragraph (b)(4) of this section in conjunction with § 300.323(a), and the recordkeeping requirements of § 300.323(b) which includes the recordkeeping of all information specified in paragraphs (b) and (e) of this section.

(b) In addition to data reporting requirements applicable, pursuant to other authorities and requirements set out elsewhere in U.S. law and regulation (e.g., under other NMFS programs or U.S. CBP requirements), to the particular commodity offered for entry, the importer of

record is required to provide the following data set in ACE at the time of entry into U.S. commerce for each entry containing the species or species groups listed under paragraph (a) of this section:

(1) Information on the entity(ies) harvesting or producing the fish: Name and flag state of harvesting vessel(s) and evidence of fishing authorization; Unique vessel identifier(s) (if available); Type(s) of fishing gear used to harvest the fish; Name(s) of farm or aquaculture facility. Vessel-, farm-, or aquaculture facility-specific information is not required if the importer of record provides information from an Aggregated Harvest Report as provided under paragraphs (b) (2) and (3) and (g) of this section, unless the product offered for entry is subject to another NMFS program that requires data reporting or documentation at an individual vessel, farm, or aquaculture facility level.

(2) Information on the fish that was harvested and processed: Species of fish (Aquatic Sciences Fishery Information System 3-alpha code as listed at <https://www.fao.org/>); product form(s) at the point of first landing whether unprocessed or processed prior to landing/delivery; and quantity and/or weight of the product(s) as landed/delivered. When an Aggregated Harvest Report is used, the importer must provide all of the information required under this paragraph (b) (2), but may

provide the total quantity and/or weight of the product(s) landed/delivered on the date of the report.

(3) Information on where and when the fish were harvested and landed: Area(s) of wild-capture or aquaculture location; location of aquaculture facility; point(s) of first landing; date(s) of first landing, transshipment, or delivery; and name of entity(ies) (processor, dealer, vessel) to which fish was landed or delivered. When an Aggregated Harvest Report is used, the importer must provide all of the information under this paragraph (b)(3). Some product offered for entry may be comprised of products from more than one harvest event and each such harvest event relevant to the contents of the shipment must be documented; however, specific links between portions of the shipment and a particular harvest event are not required.

(4) The NMFS-issued IFTP number for the importer of record.

(c) The importer of record, either directly or through an entry filer, is required to submit the data under paragraph (b) of this section through ACE as a message set and/or image files in conformance with the procedures and formats prescribed by the NMFS Implementation Guide and CBP and made available at:

<https://www.cbp.gov/trade/ace/catair>. All harvest events contributing to the inbound shipment must be reported, but

links between portions of the shipment and particular harvest events are not required.

(d) Imported shipments of fish or fish products subject to this program may be selected for inspection and/or the information or records supporting entry may be selected for audit, on a pre- or post-release basis, in order to verify the information submitted at entry and/or determine compliance with this part. To support such inspection and audits, the importer of record must make all records required to be maintained under paragraph (e) of this section available for audit or inspection, at the importer's place of business for a period of two years from the date of the import. In addition, upon request by NMFS, the importer of record (IOR) must transmit records in the manner specified to simp.audits@noaa.gov or National Seafood Inspection Laboratory, 3209 Frederic St, Pascagoula, MS 39567. Unless otherwise specified by NMFS, requested records must be submitted within five days from receipt of the record request if the importer of record choose to transmit the records via electronic means over e-mail or using a secure file sharing service as identified by the agency. If the importer of record chooses to transmit the records via secured shipping such as UPS, FedEx or U.S. Post Office, the agency must receive the records within ten days from receipt of the record request, unless otherwise specified by NMFS.

(e) In addition to the entry recordkeeping requirements specified at 19 CFR part 163, the importer of record is required to maintain records of the information reported at entry under paragraph (b) of this section, as well as records containing information on the chain of custody of the fish or fish products sufficient to trace the fish or fish product from point of entry into U.S. commerce back to the point of harvest, including individual or Aggregated Harvest Reports, if any, and information that identifies each custodian of the fish or fish product (such as any transshipper, processor, storage facility, or distributor). The latter may include widely used commercial documents such as declarations by the harvesting/carrier vessels or bills of lading. The importer of record must retain records of information reported at entry and chain-of-custody in electronic or paper format, and make them available at the importer of record's place of business for a period of two years from the date of product entry.

(f) Product coming into the Pacific Insular Area, as defined in 16 U.S.C. 1802(35), is subject to all requirements of this section except the ACE filings required under paragraphs (b) and (c) of this section. However, when product is moved from the Pacific Insular Area to any place within the customs territory of the United States, all requirements of this section apply.

(g) An Aggregated Harvest Report, as provided in paragraphs (b) (2) and (3) of this section, may be used to record aggregated catches from small-scale fishing vessels made at a single collection point on a single calendar day, or aggregated deliveries from small-scale aquaculture facilities made at a single collection point or processing facility on a single calendar day.

(1) A small-scale fishing vessel, for purposes of this section, is no more than 20 measured gross tons or less than 12 meters in length overall. An Aggregated Harvest Report may also be used for catches landed by a vessel to which the catches of one or more small-scale fishing vessels were transferred at sea. Aggregated Harvest Reports must include the number of vessels contributing to the collection point for that day.

(2) A small-scale aquaculture facility, for purposes of this section, delivers no more than 1,000 kilograms to the same collection point or processing facility on the single calendar day specified in an Aggregated Harvest Report. Aggregated Harvest Reports must include the number of aquaculture facilities contributing to the collection point or processing facility for that day.

(3) An Aggregated Harvest Report may be used for catches by fishing vessels less than 20 measured gross tons or less than 12 meters in length overall, from catches collected from multiple locations or landed on the same

calendar day; or aquaculture facility deliveries of less than 1,000 kilograms, or deliveries made at multiple locations or on the same calendar day.

6. In § 300.325:

a. Remove the word "and" at the end of paragraph (b);

b. Remove the period at the end of paragraph (c) and add "; and" in its place; and

c. Add paragraph (d).

The addition reads as follows:

§ 300.325 Prohibitions.

* * * * *

(d) Submit an entry filing under § 300.324(b) that includes an IFTP number assigned by NMFS to an entity other than the importer of record.

PART 600 - MAGNUSON-STEVENSON ACT PROVISIONS

7. The authority citation for part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

Subpart H - General Provisions for Domestic Fisheries

8. In § 600.725, revise paragraph (a) to read as follows:

§ 600.725 General prohibitions.

* * * * *

(a) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, land, import, export, or re-export, any fish or parts thereof taken or retained in violation of the Magnuson-Stevens Act or any other statute administered by NMFS or any NMFS regulation in this title or permit issued thereunder, or import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce any fish taken, possessed, transported, or sold in violation of any foreign law or regulation, or any treaty or in contravention of a binding conservation measure adopted by an international agreement or organization to which the United States is a party.

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